IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.200 OF 2004

Vasant Krishna Ghorpade ..Appellant

Versus

Dattatraya Tukaram Patil & Ors. ..Respondents

WITH

SECOND APPEAL NO.201 OF 2004

Vasant Krishna Ghorpade ..Appellant

Versus

Dattatraya Tukaram Patil & Ors. ..Respondents

Mr.D.V.Sutar for Appellant

Mr.P.S.Dani with Venegaonkar for Respondents

CORAM : P.V.KAKADE, J.

DATE : 14th OCTOBER, 2004.

P.C.:

1. Both these appeals arise from the common judgment passed by Lower Appellate Court and therefore heard together.

2. The Appellant-plaintiff has preferred these appeals against the Order passed by Addl. District Judge, Kolhapur dated 6th December, 2003 whereby Regular Civil Appeal No.189 of 1998 filed by plaintiff was dismissed and Regular Civil Appeal No.179 of 1998 filed by Defendant Nos.1 and 2 was partly allowed and order of perpetual injunction granted by the trial court in favour of plaintiff in respect of suit land Gat No.1637 admeasuring 2 Hectare 74 Rs is set aside and relief of injunction was not granted to the plaintiff about the said land. The order passed by the civil judge in respect of House properties situated in Gat No.1637 bearing Grampanchayat House No.1278 was confirmed protecting defendants possession therein.

3. The plaintiff filed suit against the defendants for grant of perpetual injunction to restrain the defendants from disturbing their peaceful possession over land Gat No.1614 admeasuring 1 Hectare 0.1 R and Gat No.1537

admeasuring 2 Hectare 74 R and residential house situated in Gat No.1637 of which Grampanchayat No.1279 of Mouja Shirdhon, Tal. Shirol, Dist. Kolhapur.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the suit deserves to be partly decreed and therefore, the suit for property No.1-A Gat No.1614 was dismissed and defendants were perpetually restrained from obstructing peaceful possession of the plaintiffs in suit property No.1-B Gat No.1637 and constructed house in Gat No.1637 of which Grampanchayat No.1278 till defendants dispossess plaintiffs from suit property in due process of law. This order was carried to the appeal court by filing two appeals i.e. Regular Civil Appeal No.189 of 1998 wherein plaintiffs challenged the part of the lower courts order and Regular Civil Appeal No.179 of 1988 wherein the defendant nos.1 and 2 challenged part of the lower courts order.

4. I heard the learned counsel for the appellant exhaustively. Perused the entire record. It was submitted on behalf of the appellants, the substantial question of law involved in the appeal was to the effect

whether the appellant was entitled to protection of his possession until he was dispossessed through due process of law?

. It is to be noted that the learned trial judge concluded that the plaintiffs proved that they are in possession of the property Gat No.1637 and house therein but did not prove their possession in Gat No.1614. Similarly plaintiffs were held to have proved that the defendants were obstructing their possession only to the extent of Gat No.1637 and house in it but did not obstruct their possession in Gat No.1614 and therefore, the suit was partly decreed to that effect. The learned lower Appellate Court Judge after hearing both the parties recorded the findings to the effect that the plaintiffs had proved their possession in respect of House No.1278 and not Gat No.1637 and 1614 and in view of this position order passed by the lower court it was interfered to that extent. It was urged on behalf of the appellant that he was entitled to protection of the court to his possession in Gat No.1637 as well as the house property situate therein which was admittedly in his possession. The lower Appellate Court Judge has observed that it is true that the house is in possession

of the plaintiffs, however, it does not mean that entire land is in their possession. In other words, merely on the basis of possession of the house, it cannot be said that the entire land of Gat No.1637 admeasuring 2 Hectare 74 Rs was in possession of the plaintiffs and as such the lower Appellate Court refused to protect the plaintiffs possession to that extent of landed property in which he was held to be a trespasser.

5. On perusal of the judgment of both the courts below and available evidence lead by both the parties, I do not see any reason as to why the findings recorded by the lower appellate court to be interfered with, especially when the plaintiffs possession to the extent of house property involved is duly protected by the lower appellate court. Such protection cannot be in law extented to the entire landed property wherein the suit house is located, especially when it is established that the plaintiffs were found to be trespassers simplicitor therein, and therefore, cannot claim any legal protection so far as landed property is concerned.

6. Therefore, I have no doubt whatsoever that no substantial question of law involved in these appeals.

If we rely on the ratio laid down by the Apex Court in the case of **KONDIBA DAGADU KADAM VS. SAVITRIBAI SOPAN GUJAR & ORS. AIR 1999 (3) SUPREME COURT 2213**, it is to be noted that the conditions mentioned in the Section 100 must be strictly fulfilled before a second appeal can be maintained and no Court has the power to add to or enlarge those grounds. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible.

7. In the circumstances I hold that both the appeals deserve to be dismissed and therefore liable to be dismissed in limine.

. Consequently the Civil applications in both the appeals also stands dismissed with no order as to costs.